crued by lapse of time. But the court rightly decides that by his deed A does not abandon possession of the minerals, rather he continues to assert his right therein for his grantee. And a recent Tennessee case reaches the same conclusion. *McBurney* v. *Glenmary Coal & Coke Co.*, 121 Tenn. 275.

PATENTS — INFRINGEMENT: RIGHT TO ACCOUNTING OF PROFITS IN EQUITY. — The plaintiff filed a bill for infringement of a patent, averring that he had never manufactured or sold the patented article, nor sustained actual damage from the use of his invention by others, and praying for an injunction, and accounting of profits. By the rules of the court the cause could not be heard until a time when the patent would have expired, and hence an injunction could not be obtained. The defendant demurred. *Held*, that the demurrer should be overruled. *Tompkins* v. *International Paper Co.*, 183 Fed. 773 (C. C. A., Second Circ.).

The owner of a patent should be so secured against infringement of his right that not only should he not lose but the infringer should not gain by his own wrong. See WALKER, PATENTS, 3 ed., § 420. Equity furnishes this security by compelling the infringer to account for profits. But a bill for a bare accounting of profits will not be sustained in equity; there must be an independent ground of equitable jurisdiction, *e. g.*, the right to an injunction. *Root* v. *Railway Co.*, 105 U. S. 189. The remedy at law, however, often fails to afford proper protection, for the infringer's profits may exceed the inventor's damages. Recognizing this, a statute allows the court to impose treble damages. U. S. COMP. ST., 1901, § 4919. But in the principal case, the damages are nominal, and treble damages would not equal profits. It would seem that the plaintiff might waive the tort and sue in assumpsit. See *Sayles* v. *Richmond, Fredericksburg & Potomac R. Co.*, 4 Ban. & A. (U. S.) 239; *Steam Stone Cutters Co.* v. *Sheldons*, 15 Fed. 608. But as the right to this action is not clearly established, the principal case is to be supported on the ground that equitable jurisdiction arises from lack of an adequate remedy at law. See *Root* v. *Railway Co.*, 105 U. S. 189, 216.

PUBLIC OFFICERS — RIGHT OF RETIRING CITY OFFICIAL TO REMOVE INDEX INSTALLED BY HIM. — A city treasurer, whose duty it was to keep voluminous assessment records, installed an improved card index system at his own expense. This he was not required by law to do. His successor applied for an injunction restraining him from removing the index. *Held*, that the injunction should be granted. *Robison* v. *Fishback*, 93 N. E. 666 (Ind.).

The holding that the index became public property under the circumstances and hence could not be removed is clearly right. *Herron* v. *McEnery*, 1 McGloin (La.) 108. The index seems properly a part of the public records. See *Herron* v. *McEnery*, *supra*. But *cf. Bishop* v. *Schneider*, 46 Mo. 472. Even if the index is not strictly part of the public records, the public interest requires that it should not be removed, since it is indispensable in the use of the records. *Cf. Commissioners of Tippecanoe County* v. *Mitchell*, 131 Ind. 370. Indeed, the cases go further than to hold that the property right has vested in the public, and deny the retiring official any compensation. He has no contract for breach of which he may recover. For compensation as a public officer, he is entirely dependent on statutory provision. *Rasmusson* v. *County of Clay*, 41 Minn. 283; *Towsley* v. *Ozaukee County*, 60 Wis. 251. Public officers are deemed to have accepted their offices *cum onere*. If the installing of the index is incidental to his official duties, he is fully paid by his salary. *Gilchrist* v. *City of Wilkes-Barre*, 142 Pa. St. 114. If it is not, he must be treated as a volunteer, not entitled to recover in quasi-contract. *Rowe* v. *County of Kern*, 72 Cal. 353.

QUASI-CONTRACTS — MONEY PAID TO USE OF DEFENDANT — RECOVERY FOR PERFORMANCE OF DEFENDANT'S CONTRACTUAL DUTY. — The defendant

contracted to support a relative. On his failure to do so, the plaintiff cared for her while she was ill. *Held*, that he cannot recover from the defendant for his services. *Matheny* v. *Chester*, 133 S. W. 754 (Ky.).

The court denied recovery on the ground that the plaintiff was in no way affected by the defendant's contract. But it entirely overlooks the possibility of a quasi-contractual right arising from the benefit conferred by the discharge of the defendant's obligation. *Exall* v. *Partridge*, 8 T. R. 308. To establish this it must be shown that the plaintiff did not act officiously. *Dunbar* v. *Williams*, 10 Johns. (N. Y.) 249. He must act under some necessity, such as to preserve his property or discharge his debt. *Johnson* v. *Royal Mail Steam Packet Co.*, L. R. 3 C. P. 38. Even fulfilling a strong moral duty, such as supporting those in need or rendering funeral services, is enough. *Gilley* v. *Gilley*, 79 Me. 292; *Patterson* v. *Patterson*, 59 N. Y. 574. The plaintiff, moreover, must expect recompense. See KEENER, QUASI-CONTRACTS, 350. In the principal case the illness of the defendant's relative furnishes, on the authorities, sufficient necessity. The result of the decision may be right if the evidence showed that no recompense was expected, but the court's reasoning seems indefensible, since one not a party to the defendant's contract to support may be allowed recovery in quasi-contract. *Forsyth* v. *Ganson*, 5 Wend. (N. Y.) 558; *Rundell* v. *Bentley*, 53 Hun (N. Y.) 272. The decision leads to a circuity of action, since the plaintiff may recover from the defendant's relative, who may in turn sue the defendant.

RESTRAINTS ON ALIENATION — CONDITION AGAINST ALIENATION QUALIFIED AS TO PERSONS. — The testatrix devised property in fee to children and grandchildren on condition that if any of them "shall voluntarily or involuntarily alienate or devise the portion set apart for them other than to some descendant of mine (except for life to the wife or husband of some descendant of mine while such descendant may be living) and without the consent of all my descendants who shall at the time be capable of conveying real property," then over to the other descendants. *Held*, that the conditional limitation over is void. *Manierre* v. *Welling*, 78 Atl. 507 (R. I.).

It is now well settled that a condition or conditional limitation restraining an owner in fee simple from selling his land is bad. *Potter* v. *Couch*, 141 U. S. 296. And the same result follows when the restriction is against alienation within a limited time. *Mandlebaum* v. *McDonell*, 29 Mich. 78. Where the restraint is one qualified as to persons, the authorities are in hopeless confusion and no settled rule has been evolved. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., §§ 31–45. One test adopted in determining the validity of such clauses is "whether the condition takes away the whole power of alienation substantially." *In re Macleay*, L. R. 20 Eq. 186, 189. But its correctness has been doubted in a later decision. *In re Rosher*, 26 Ch. D. 801, 816. It is frequently said that a condition not to alienate to particular persons is good. See *Winsor* v. *Mills*, 157 Mass. 362, 364. And this would seem to be correct, since the removal of these persons from the number of possible transferees effects practically no restraint on alienation. It is submitted as the correct rule that any condition against alienation is bad if alienation is restricted to particular individuals or a particular class, and hence the court in the main case properly held the restraint invalid.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — RESTRICTION ON USE OF LEASEHOLD PREMISES CONTINUING AFTER SURRENDER. — A had leasehold interests in two neighboring shops, in one of which he carried on the trade of a pork butcher, and in the other that of a general butcher. A sold his lease and business in the latter to the plaintiff, covenanting not to engage in the trade of general butcher within three miles. The defendant, who had notice of this covenant, decided to buy A's business; so A surrendered his lease in the first shop. The defendant took out a new lease of the